

REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed June 27, 2008 and the Advisory Action mailed October 31, 2008. At the time of the Final Office Action, Claims 10 and 12-16 were pending in this Application. Claims 10 and 12-16 were rejected. Claims 10, 12, 13, 15, and 16 have been amended to further define various features of Applicants' invention. Claims 1-9 and 11 were previously cancelled without prejudice or disclaimer. Claims 17-24 have been added. The new limitations of claims 17 and 23 are disclosed in Fig. 2 and associated description. The new limitations of claims 18 and 24 are disclosed for example in paragraph [002] on page 5 of the originally submitted specification. Claims 19-22 correspond to claims 13-16. Thus, no new matter has been introduced. Applicants respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 112

Claims 10 and 12-16 were rejected by the Examiner under 35 U.S.C. §112, second paragraph, as being indefinite and failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants amend Claims 10 and 12 to overcome these rejections and respectfully request full allowance of Claims 10 and 12 as amended.

Rejections under 35 U.S.C. §103

Claims 10 and 12 were rejected under 35 U.S.C. §103(a) as being unpatentable over German Patent No. 10016900 by Hansjoerg Bochum et al. ("Bochum") in view of U.S. Patent No. 5,758,622 issued to Helmut Rembold et al. ("Rembold").

Claims 13-16 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Bochum* in view of *Rembold* and U.S. Patent No. 6,761,149 issued to Kurt Frank ("Frank").

Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

In order to establish a *prima facie* case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references, however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Rather, the Examiner must identify an apparent reason to combine the known elements in the fashion claimed. *Id.* “Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on *ex post* reasoning. *KSR*, 127 S.Ct. at 1742. In addition, evidence that such a combination was uniquely challenging or difficult tends to show that a claim was not obvious. *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. and Mattel, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), citing *KSR*, 127 S.Ct. at 1741.

According to the independent claims the actuating signal is determined depending on either a variation in a fuel flow rate or a variation in the fuel pressure. *Bochum* merely discloses to use the actual pressure and does not consider any type of variation such as a gradient. Hence, Applicant believes that all independent claims are allowable in view of the cited prior art. Applicants respectfully submit that the dependent Claims are allowable at least to the extent of the independent Claim to which they refer, respectively. Thus, Applicants respectfully request reconsideration and allowance of the dependent Claims. Applicants reserve the right to make further arguments regarding the Examiner's rejections under 35 U.S.C. §103(a), if necessary, and do not concede that the Examiner's proposed combinations are proper.

Request for Continued Examination (RCE)

Applicants enclose a Request for Continued Examination (RCE) Transmittal, and authorize the Commissioner to charge \$810.00 to Deposit Account No. 50-2148 of Baker Botts L.L.P. for the RCE fee.

CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants respectfully submit a Petition for Two-Month Extension of Time. The Commissioner is authorized to charge the fee of \$490.00 required to Deposit Account 50-2148 in order to effectuate this filing.

Applicants believe there are no other fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2545.

Respectfully submitted,
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